

remarries before the close of his or her tax year. In addition, a joint return may not be filed if the tax year of either spouse is a fractional part of a year as a result of a change of accounting period under section 443(a)(1) of the Internal Revenue Code.

A joint return may be filed and must be signed by both the decedent's personal representative and the surviving spouse, if any, if a personal representative is appointed before the last day prescribed by law, including extensions, for filing the return of the surviving spouse.

A joint return may be filed by the surviving spouse with respect to that spouse and the decedent if no return for the tax year has been filed by the decedent and no personal representative is appointed at the time the joint return is filed or before the last day prescribed by law, including extensions, for filing the return of the surviving spouse.

If a personal representative of the decedent is appointed after a surviving spouse has filed a joint return, the personal representative may disaffirm that return by filing a separate return for the deceased spouse within one year after the last day prescribed by law for filing the return of the surviving spouse. If the joint return is disaffirmed, the return filed by the survivor is the survivor's separate return, and the tax will be recomputed by excluding all items properly includable in the decedent's return and using the married filing separately tax rates.

d. Spouse of Individual Missing in Action.

The spouse of an individual missing in action in a designated combat zone may file a joint return even though the return is not filed with the missing spouse, if the requirements of section 6013(f) of the Internal Revenue Code are met.

7. Filing Joint Return After Filing Separate Return (Create s. 71.10(20), effective for 1986 tax year and thereafter.)

A husband and wife may file a joint return after they have filed separate returns even though the time prescribed by law for timely filing the return for that tax year has expired. All payments, credits, refunds or other repayments made or allowed on the separate return of either spouse for that tax year are taken into account in determining to what extent the tax shown on the joint return has been paid.

a. Elections Made on Separate Returns.

If a joint return is filed, any election, other than the election to file a separate return, made by either spouse in his or her separate return for that tax year with respect to the treatment of any income, deduction or credit of that spouse may not be changed in the filing of the joint return if the election would have been irrevocable if the joint return had not been filed.

b. Effect of Death of a Spouse.

In the tax year in which the death of one or both spouses occurs, a joint return may be filed by the decedent's personal representative and the surviving spouse, if any, after one or both spouses filed a separate return for a tax year for which a joint return could have been filed.

c. Requirements to File a Joint Return.

The election to file a joint return may not be made

- (1) Unless the tax due on the joint return is paid in full at or before the time the joint return is filed.
- (2) After four or more years from the last date prescribed by law for filing the return for that tax year, determined without regard to any extension of time granted to either spouse.
- (3) After a notice of adjustment for that tax year has been mailed to either spouse and the spouse files a petition for redetermination.
- (4) After either spouse has brought suit in any court for the recovery of any part of the tax for that tax year.
- (5) After either spouse has entered into a closing agreement for that tax year.
- (6) After any civil or criminal case against either spouse for that tax year has been compromised.

d. When Joint Return Is Deemed Filed.

- (1) For purposes of s. 71.10(9) and s. 71.11, relating to limitations on assessments and collections, a joint return is deemed to have been filed under this provision as follows:
  - (a) If both spouses filed separate returns before filing the joint return - on the date the last separate return was filed but not earlier than the last day prescribed by law for filing the return of either spouse.
  - (b) If only one spouse filed a separate return before filing the joint return and the other spouse had less than \$3,420 of gross income for that tax year - on the date of filing that separate return but not earlier than the last day prescribed by law for filing that separate return.
  - (c) If only one spouse filed a separate return before filing the joint return and the other spouse had \$3,420 or more of gross income for that tax year - on the date the joint return was filed.

- (2) For purposes of s. 71.10(10), relating to limitations on claims for refunds, a joint return is deemed to have been filed on the last day prescribed by law for filing the return for that tax year, determined without regard to any extension of time granted to either spouse.
- (3) The periods of limitations under s. 71.11 and s. 71.13 on the making of assessments and the beginning of a levy or of a proceeding in court for collection includes one year immediately after the date of the filing of that joint return, computed without regard to Part d(1).

e. Penalties on Joint Return.

If the amount of tax shown on the joint return exceeds the sum of the amounts of tax shown on the separate return of each spouse, and if any part of that excess is attributable to negligence at the time of filing the separate returns, then 25% of the total amount of that excess shall be added to the tax. If any part of that excess is attributable to fraud with intent to evade tax at the time of filing the separate returns, then 50% of the total amount of that excess shall be added to the tax.

8. Filing Separate Returns After Filing Joint Return (Create s. 71.10(21), effective for 1986 tax year and thereafter.)

If a joint return has been filed for a tax year, the spouses may file separate returns for that year on or before the last day prescribed by law for timely filing the return of either spouse has elapsed. If a husband and wife change from a joint return to separate returns within the time prescribed, the tax paid on the joint return shall be allocated between them in proportion to the tax liability shown on each separate return. A separate return may not be filed unless the amount shown on that separate return is paid in full on or before the time the separate return is filed.

In the tax year in which the death of one or both spouses occurs, either the surviving spouse or the decedent's personal representative may file a separate return after a joint return had been filed by the surviving spouse, or by the personal representative and surviving spouse, as follows:

- a. The surviving spouse may file a separate return on or before the last day prescribed by law for timely filing that spouse's return has elapsed.
- b. The personal representative may file a separate return for the decedent within one year after the last day prescribed by law for filing the return of the surviving spouse, including extensions.

If a separate return is filed by the surviving spouse or by the decedent's personal representative, the joint return previously filed shall be the separate return of the surviving spouse or the decedent for whom the separate return was not filed, unless both the surviving spouse and the decedent's personal representative file separate returns. The tax on the separate return of the surviving spouse is determined by excluding all items properly includable in the separate return of the decedent. The tax on the separate return of the decedent is determined by excluding all items properly includable in the return of the surviving spouse.

The time allowed a personal representative to disaffirm the joint return by the filing of a separate return for a deceased spouse does not establish a new due date for the deceased spouse's return.

9. Joint Return Liability (Amend s. 71.11(2), effective for 1986 tax year and thereafter.)

Persons filing a joint return are jointly and severally liable for the tax, interest, penalties, fees, additions to tax and additional assessments applicable to the return.

A person shall be relieved of liability in regard to a joint return in the manner specified in section 6013(e) of the Internal Revenue Code, notwithstanding the amount or percentage of the understatement.

10. Separate Return Liability (Create s. 71.11(2m), effective for 1986 tax year and thereafter.)

A spouse filing a separate return may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments with regard to unreported marital property income in the manner specified in section 66(c) of the Internal Revenue Code. The Department may not apply marital property law in assessing a taxpayer with respect to marital property income the taxpayer did not report if that taxpayer failed to notify the taxpayer's spouse about the amount and nature of the income before the due date, including extensions, for filing the return for the tax year in which the income was derived. The Department shall include all of that marital property income in the gross income of the taxpayer and exclude all of that marital property income from the gross income of the taxpayer's spouse.

11. Claims for Refunds by Spouses (Amend s. 71.10(10)(f), create s. 71.10(10)(gm), effective for 1986 tax year and thereafter.)

A claim for refund relating to a joint return must be signed by both spouses. If the claim relates to a separate return, the spouse who filed the separate return must sign the claim for refund. A marital property agreement between spouses has no effect on claims for refund.

A refund relating to the separate return of a spouse shall be issued to the spouse who filed the return. For joint returns, a refund shall be issued jointly to both spouses.

12. Credit Overpayments or Refunds Against Tax Liabilities (Rename s. 71.09(10) to 71.09(10)(intro.) and amend s. 71.09(10)(intro.) as renumbered, amend s. 71.09(9), create s. 71.09(10)(a) and (b), effective for 1986 tax year and thereafter.)

a. Offsetting Refund of One Spouse Against Tax Owed by the Other Spouse.

Under prior law, if a combined return was filed, all or part of a refund computed by one spouse could be offset against a tax due computed by the other spouse, at the election of the spouses. Beginning with the 1986 tax year, a spouse filing a separate return may not credit a refund computed on such return against a tax due computed on the separate return of the other spouse.

b. Offsetting Refunds Against Delinquencies.

A refund resulting from a joint return may be applied by the Department as follows:

- (1) Against a tax liability of either spouse or both spouses that was incurred during marriage by a spouse after December 31, 1985, or after establishment of a marital domicile in Wisconsin, whichever is later.
- (2) Against a tax liability of a spouse that was incurred before January 1, 1986, or before marriage, whichever is later, to the extent the refund was based on taxable income and the deductions and credits associated with the taxable income which would have been the property of that spouse if he or she had been single for the tax year.

13. Notice of Additional Assessment (Amend s. 71.11(22), effective for 1986 tax year and thereafter.)

If married persons have filed a joint return, a notice of additional assessment may be a joint notice, and a notice received by one spouse is proper notice to both spouses. If the spouses have different addresses at the time the notice of additional assessment is sent and if either spouse notifies the Department of Revenue in writing of those addresses, the Department shall send a duplicate notice to the spouse whose address differs from the address to which the original notice was sent, if no appeal has been commenced or finalized. For the spouse who did not receive the original notice, appeal rights begin when the duplicate notice is received.

A notice of additional assessment shall be served in the same manner as a Circuit Court summons (i.e., personal service or service by publication), or by registered mail, or by regular mail, if receipt is admitted or there is satisfactory evidence of receipt.

14. Notice of Incorrect Claims for Refund (Amend s. 71.09(13)(a), effective for 1986 tax year and thereafter.)

Whenever an audit of any claim filed under s. 71.09(7), (7m), (11) or (12m) indicates that an incorrect claim was filed, the Department shall determine the correct amount and notify the claimant under s. 71.11(22).

15. Establish Procedure for Appeals by Spouses (Amend s. 71.12(1), create s. 71.02(2)(fg), effective for 1986 tax year and thereafter.)

"Person feeling aggrieved" and "person aggrieved" include

- a. The spouse of a person against whom an additional assessment was made or who was denied a claim for refund for a tax year for which a separate return was filed.
- b. Either spouse for a tax year for which a joint return was filed or, if no return was filed, a joint return could have been filed.

A spouse may appeal an assessment or a denial of a claim for refund issued with respect to a separate return filed by the other spouse. Either spouse may appeal an action relating to a joint return. An appeal by one spouse is an appeal by both spouses.

The Department shall notify spouses jointly that they may deposit with the Department the amount of an additional assessment being appealed to stop the further accrual of interest. If the spouses have different addresses and if either spouse notifies the Department in writing of those addresses, the Department shall send a duplicate notice regarding the deposit procedure.

16. Date Tax Obligations Are Incurred (Create s. 71.13(1)(c) and (d), effective for 1986 tax year and thereafter.)

- a. Any tax obligation, including interest, penalties and costs, to the Department of Revenue is incurred on the date of the Department's initial assessment or notice of the amount due of that tax.
- b. All tax obligations to this state, including interest, penalties and costs, incurred during marriage by a spouse after December 31, 1985, or after the establishment of a marital domicile in Wisconsin, whichever is later, are incurred in the interest of the marriage or family and may be satisfied only under ss. 766.55(2)(b) and 859.18. However, if one spouse is relieved of liability under s. 71.11(2) or (2m), the tax obligation to this state of the other spouse may be satisfied only under s. 766.55(2)(d).

17. Permit Spouse or Former Spouse to Obtain Tax Return Information (Create s. 71.11(44)(c)11, effective for 1986 tax year and thereafter.)

A spouse or former spouse of a taxpayer may request and receive information from a return (or claim for credit) filed by the taxpayer. The information may be obtained only if the spouse or former spouse making the request could be subject to a collection action with respect to a delinquency relating to the return (or claim for credit) from which information is being requested.

18. Six Year Statute of Limitations (Amend s. 71.11(21)(g)1, effective for 1986 tax year and thereafter.)

In order for the six year statute of limitations to apply in the case of married persons filing a joint return, the tax on the additional income must exceed \$200. For single persons or married persons filing separate returns, the tax on the additional income must exceed \$100.

19. Impose Penalty for Filing a False or Fraudulent Return (Amend s. 71.11(42), effective for 1986 tax year and thereafter.)

A person who files a false or fraudulent income tax return with intent to defeat or evade tax shall be guilty of a felony and may be fined not more than \$10,000 or imprisoned not more than five years or both, together with the cost of prosecution. "Return" includes

- a. A separate return filed by a spouse for a tax year for which a joint return is filed under s. 71.10(20) after the filing of that separate return.
- b. A joint return filed by the spouses for a tax year for which a separate return is filed under s. 71.10(21) after the filing of that joint return.

20. Impose Penalty for Filing an Incomplete or Incorrect Return (Amend s. 71.11(47), effective for 1986 tax year and thereafter.)

If a person files an incomplete or incorrect return, unless the filing was due to good cause and not due to neglect, there shall be added to the person's tax 25% of the amount otherwise payable on any income subsequently discovered or reported. "Return" includes

- a. A separate return filed by a spouse for a tax year for which a joint return is filed under s. 71.10(20) after the filing of that separate return.
- b. A joint return filed by the spouses for a tax year for which a separate return is filed under s. 71.10(21) after the filing of that joint return.

21. Declaration of Estimated Tax Requirements for Farmers and Fishers (Amend s. 71.21(2)(intro.), (3) and (8), effective for 1986 tax year and thereafter.)

- a. Commercial fishers are accorded the same treatment as farmers. Fishers may avoid the penalty for underpayment of estimated tax either by paying their entire estimated tax on or before the 15th day of the first month following the close of the tax year, or by filing their tax return and paying the tax due on or before the first day of the third month following the close of the tax year.
- b. If a person files a joint return, both the income of that person and that person's spouse must be considered to determine if two-thirds of their income is from farming or fishing.
- c. Individuals will qualify as farmers or fishers if their gross income from farming or fishing for the preceding tax year was at least two-thirds of the total gross income from all sources shown on that return.

22. Joint and Separate Declarations of Estimated Tax (Amend s. 71.21(20), effective for 1986 tax year and thereafter.)

- a. Joint Declaration of Estimated Tax.

Married persons may file a joint declaration of estimated tax unless either spouse is a nonresident alien or the spouses have different tax years. If they do file a joint declaration, the provisions of s. 71.21 apply to the married persons jointly.

If a married person files a separate return for a tax year for which a joint declaration of estimated tax was previously filed, the payments under the joint declaration may be allocated between the spouses as they choose. If the spouses do not agree on an allocation, the Department of Revenue shall allocate the payments to each spouse on the basis of the ratio of taxes shown on their separate returns or pursuant to default assessment under s. 71.11(4) and (5).

b. Separate Declaration of Estimated Tax.

If either spouse files a separate declaration of estimated tax, no part of the payment on one declaration may be allocated to the other spouse.

23. Exceptions to the Underpayment Penalty (Amend s. 71.21(14)(a) and (b), effective for 1986 tax year and thereafter.)

a. Exception Number One (s. 71.21(14)(a)).

If a husband and wife who filed separate returns for the preceding tax year file a joint return, the tax shown on the return for the preceding year is the sum of the taxes shown on the separate returns of the husband and wife.

If a husband and wife who filed a joint return for the preceding tax year file separate returns, the tax shown on the return for the preceding tax year is the husband's or wife's proportion of that tax based on their respective tax liabilities for that year had they filed separately.

b. Exception Number Two (s. 71.21(14)(b)).

Married persons shall follow the procedures under, and the regulations interpreting, section 6654 of the Internal Revenue Code as that section existed before it was affected by Public Law 98-369, the Tax Reform Act of 1984. (Public Law 98-369 eliminated this exception for federal purposes.)

24. Requests for Extension of Time to File Tax Returns (Amend s. 71.10(5)(b), effective for 1986 tax year and thereafter.)

In the case of a joint return, a request for an extension must be signed by both spouses or authorized representatives.

25. Provide That Marital Property Agreements Have No Effect Upon Homestead Credit (Amend s. 71.09(7)(a)6, 7 and 8 as renumbered, effective for 1986 tax year and thereafter.)

A marital property agreement under s. 766.58 has no effect in computing "income", "rent constituting property taxes accrued" or "property taxes accrued" for a person whose homestead is not the same as the homestead of that person's spouse.

26. Inheritance Tax Exclusion - Survivorship Marital Property (Amend s. 72.12(6)(a) and (b)(intro.), effective for deaths occurring on or after January 1, 1986.)

Survivorship marital property is excluded from being considered as a survivorship interest for inheritance tax purposes. The removal of survivorship marital property from the computation of a taxable joint tenancy to the extent survivorship marital property constitutes all or a portion of a joint tenancy leaves s. 71.05(1)(g), as amended, controlling for the computation of basis.

27. Claim for Refund - Marital Property Gift (Amend s. 72.86(4), effective for gifts occurring on or after January 1, 1986.)

A claim for refund of gift tax may be filed within one year after entry of judgment or receipt of the recovery of marital property or compensation from the donee under s. 766.53(1). Under s. 766.53, a spouse acting alone may gift marital property to a third person only if the property given does not exceed \$500 in a calendar year or a larger amount if, when the gift is made, the gift is reasonable in amount considering the economic position of the spouses. If the limits are exceeded, the nondonor spouse may recover the property or a compensatory judgment for the amount in excess of the limits, with the action being against the donor spouse, the donee or both.

J. OTHER

1. Set Off of Payments to Vendors (Create ss. 16.767, 16.875 and 73.12, effective July 20, 1985.)

Upon request by the Department of Revenue, the Department of Administration shall set off amounts owed by the state to vendors, against any delinquent state taxes the vendor owes the Department of Revenue. The setoff may only be requested against vendors whose contracts with the state are \$3,000 or more.

If the Secretary of Administration determines, within 30 days after receipt of a request for setoff, that the vendor is either an essential supplier of critical commodities or the only vendor from whom the necessary goods or service can be obtained, the Secretary of Administration can notify the Secretary of Revenue of that determination and may waive the right of setoff.

The Department of Administration may collect from vendors and provide to the Department of Revenue any tax identification information that the Department of Revenue requires to administer this provision.

The Department of Administration shall, within 30 days after the end of each quarter, transfer to the Department of Revenue the taxes set off during the previous calendar quarter.

The exchange of information under this provision between the Department of Revenue and the Department of Administration does not violate any of the confidentiality provisions of ss. 71.11(44), 72.06, 77.61(5), 78.80(3) or 139.38(6).